IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

FIRST APPEAL No 457 of 1980

For Approval and Signature:

Hon'ble MR.JUSTICE M.C.PATEL

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

UNION OF INDIA

Versus

K R & COMPANY

Appearance:

MR JC SHETH for Appellant

NOTICE SERVED for Respondent No. 1

CORAM : MR.JUSTICE M.C.PATEL

Date of decision: 09/10/2002

ORAL JUDGEMENT

1. This appeal by the Union of India is directed against the judgment and decree dated 29th September, 1979 passed by the learned Civil Judge (S.D.), Rajkot in

Civil Suit No.205 of 1977.

2. The respondent - plaintiff had filed the said suit against the Union of India representing Western Railway claiming Rs.12,100-30 ps. as damages. The plaintiff was the endorsed consignee and the owner of the goods. According to the plaintiff, the consignment of 220 bags of sugar was booked to the plaintiff from Gandhinagar O.A. to Lakhajinagar under Invoice No.8 and R.R. No.466362 dated 27th August, 1974. The plaintiff's case was that the bags were damaged by rain water in transit and that there was also short delivery. He also alleged that he had suffered a loss on account of the fall in price.

3. The appellant - defendant resisted the plaintiff's claim by filing a written statement. They contended that the goods were carried out throughout in a wagon which was watertight and the alleged loss was due to atmospheric effect in the rainy season for which the defendant was not liable.

4. The learned Trial Judge raised the following issues for decision:-

(1) Whether the plaintiff firm is registered partnership firm?

(2) Whether the plaintiff proves that 90 bags of Sugar were damaged by water in transit and thereby the plaintiff suffered loss of Rs.2345/-?

(3) Whether the plaintiff proves that one bag of Sugar and 103 Kgs. of alleged three damaged bags were delivered short and therefore, plaintiff suffered loss of Rs.1035-30 ps.?

(4) Whether plaintiff prove that suit consignment was delivered late and delivered and therefore plaintiff suffered loss of Rs.8724/- on account of price sunk down from Rs.510/- to Rs.470/- as alleged in plaint para-2(C)?

(5) Whether defendant proves that loss suffered by plaintiff was not due to misconduct and negligence of defendant?

(6) Whether suit notice is legal and valid?

(7) What is found due to plaintiff?

After recording the evidence, oral and documentary, led by the parties, the learned Trial Judge recorded the following findings on the said issues:-

(1) Yes.

(2) Yes.

(3) Yes. assessing Rs.4842/-.

(4) Yes, Rs.6600/-.

(5) No.

(6) Yes.

(7) Rs.9429/-.

5. The learned Judge, therefore, passed the decree for Rs.9429/- with interest at 6% per annum on the same from the date of the suit till realisation in favour of the plaintiff.

6. The Union of India has, therefore, filed this appeal challenging the said decree.

7. The plaintiff had examined, in all, three witnesses including himself and the defendant had examined two witnesses. The assessment report of the damage was produced at Exh.22.

8. Shri J.C. Sheth, the learned counsel appearing for the appellant took me through the judgment and contended that the learned Trial Judge had erred in deciding the issues in favour of the plaintiff. However, the learned Judge has discussed the entire evidence in detail in paragraphs 8 to 12 of the judgment and has given cogent reasons for arriving at his conclusions. It is not shown that the findings recorded by the learned Trial Judge are in any way erroneous. There is no substance in the present appeal and the same is dismissed with no order as to costs.

(M.C. Patel, J.)

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